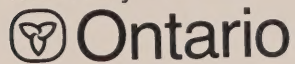


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# Workers' Compensation Reform 1988

Ministry of Labour



Gregory Sorbara, Minister





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MEMORANDUM

FROM: Gregory Sorbara  
Minister of Labour

RE: Reform of Workers' Compensation In Ontario

Reform of the workers' compensation system to meet the needs of both injured workers and employers in the most helpful and cost-effective way possible is a priority of the Government of Ontario.

On June 20, 1988 I introduced to the Legislative Assembly amendments to the Workers' Compensation Act that will play a major part in fulfilling this priority.

Specifically, the amendments provide for: fairer benefits to workers who suffer permanent disability; an increase in the level of workers' earnings covered by workers' compensation; the continuation of workers' health, pension and life insurance benefits during the first year following a workplace injury; a requirement in law that injured workers will be actively offered appropriate rehabilitation opportunities; an obligation in law on employers to re-hire injured workers once they are capable of returning to work.

At the same time, I announced that the Ministry of Labour will begin work immediately on a Green Paper, to be published next year, dealing with several other aspects of workers' compensation that require re-examination and reform.

The amendments, my statement to the Assembly, and some background material are attached for your interest and information.

I would be most interested in hearing your views on this initiative. In addition, I will be looking forward to the Legislative Assembly's discussions of these proposals.

Thank you for your consideration.



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# TABLE OF CONTENTS

Minister's Statement .....	Page 5
News Release .....	Page 11
Background Materials .....	Page 15
Summary of the Reform .....	Page 16
Bill 162, <u>The Worker's Compensation</u> <u>Amendment Act, 1988</u> .....	Page 53

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STATEMENT BY  
THE HONOURABLE GREGORY SORBARA  
MINISTER OF LABOUR  
ON  
WORKERS' COMPENSATION REFORM, 1988  
1:45 P.M.  
MONDAY, JUNE 20, 1988  
THE LEGISLATIVE ASSEMBLY OF ONTARIO  
QUEEN'S PARK, TORONTO

Mr. Speaker,

Later today I will be introducing for first reading a bill to make major changes to the workers' compensation system-- changes which respond to long-standing concerns of injured workers and employers alike.

The Bill will provide fairer compensation for workers who suffer from permanent disability as a result of a work-related injury or illness.

It will emphasize the goal of helping injured workers return to the workforce earlier and more successfully.

It will oblige employers to reinstate injured workers in their jobs.

It will impose new obligations on the Workers' Compensation Board to provide injured workers with timely access to vocational rehabilitation services.

As it now stands the system of workers' compensation in this province is not keeping up with a major purpose for which it was originally established -- to restore the financial position of injured workers as close as possible to that which existed prior to their injury. For too many injured workers, the level of pension benefits has been inadequate to cover lost income.

The workers' compensation system is also failing to make sufficient headway toward a goal to which society must attach increasing importance -- to help injured workers return to work and to earning a living. Thousands of injured workers with an unfulfilled desire to return to work offer proof of that.

The time has come to ensure fairness in workers' compensation. The time has come to provide greater opportunity for injured workers to return to active employment. The time has come to act.

Honourable Members are aware that the issues of fair compensation and opportunity for employment have been subjects of considerable study in recent years.

The Government's recent task force on vocational rehabilitation called for better access to vocational rehabilitation and early intervention by the Workers' Compensation Board to make sure that injured workers receive timely and more effective rehabilitation services.

As well, over the past 10 years several studies, a White Paper and an extensive examination by a Standing Committee of the Legislature have called for a dual award system -- a system which separately compensates injured workers for economic and non-economic losses suffered as a result of an occupational injury.

This issue has been studied thoroughly. We have sought people's views. Now we must make the changes that are required to restore fairness and to increase opportunity for workers who have suffered workplace injuries.

Mr. Speaker, I would like at this point to apprise Members of specific improvements in the workers' compensation system which will result from the Bill that I will be introducing today.

First, the Bill will put in place a dual-award system for workers with permanent disabilities suffered in the workplace.

This reform will bring fairness and certainty to workers' compensation in Ontario. Under the old system, compensation bore no particular relationship to the loss of earnings experienced by the injured worker. The new system corrects that situation. It will compensate workers for the economic losses they experience as a result of a workplace injury. It will also explicitly recognize for the first time the non-economic losses associated with permanent injuries.

The amount of money workers receive for non-economic losses will vary with their degree of disability and their age when the injury is suffered, up to a maximum of \$65,000. Workers with a non-economic award greater than \$10,000 will have the choice of a lump sum payment or a comparable lifetime pension.

At the same time, they will be awarded benefits based on their lost earning power.

Workers will be compensated for their loss of earning capacity through regular payments set at 90 per cent of their projected economic losses. Like all WCB payments, these will be tied to the Consumer Price Index.

The level of benefits will be set within a year of the injury, and reviewed twice -- two years after the original assessment, and again three years later. In addition, workers will be entitled to apply for a review if their physical condition unexpectedly deteriorates.



The new workers' compensation system will also compensate for the loss in capacity to save for retirement. Workers receiving compensation for lost earnings will be entitled to a retirement pension from the Board at the age of 65 to replace their disability payments. To finance the retirement pension benefit, the WCB will contribute an extra 10 per cent of the value of a permanent disability claimant's compensation for lost earnings to a separate retirement pension fund.

The new approach of tying compensation much more closely to economic losses means we will finally be able to throw away the meat chart as the basis for determining compensation awards. Finally, people who have been permanently disabled are going to be treated as human beings.

And that is simple justice.

I should emphasize that the individual financial implications of this change will vary, depending on the impact that an injury has on a worker's ability to earn a living. Some workers who are injured in the future will receive more money than they would have under the old system. Some will receive less. But all will receive what they need to make up for their loss of earning power. And all will receive a benefit that recognizes the non-economic losses resulting from their injuries.

During the past decade Quebec, Saskatchewan, New Brunswick, Newfoundland and the Yukon have put dual award systems in place. Quite simply, it is the fairest system for all concerned, and the one that lends itself to most efficient management.

Mr. Speaker, the Bill also protects lifetime, inflation-indexed pensions for the approximately 116,000 workers who currently receive compensation under the old system for permanent partial disability. But we recognize that roughly 20,000 people currently receive pensions which fall short of their actual loss of earning power.

For this group of injured workers, the legislation will provide for supplementary payments equal to the full monthly pension payable under Section 3 of the Old Age Security Act. These payments will be adjusted monthly for inflation and reviewed on the same basis as those provided under the new system.

These men and women provide the most eloquent testimony of the pressing need to reform workers' compensation in this province. The need for reform becomes more pressing with every passing day.

There is also considerable urgency in dealing with the second major area this Bill addresses -- the need to redirect the emphasis of the workers' compensation system to the goal of helping injured workers return to the workforce.

We want to make sure that an injury at work does not mean permanent exile from the workplace. Under the old system, the opportunity for injured workers to return to their jobs was in many cases a matter of chance. The new system will make it a matter of priority.

The new reinstatement obligation on employers will apply for injured workers who had at least one year of continuous service in the jobs they performed prior to their injury. The obligation will remain in force for up to two years after the injury takes place.

Workers who are unable to perform the job they held before suffering an injury will be entitled to an offer from their employer of the first suitable job that becomes available.

An employer's failure to meet this obligation will result in financial penalties equal to 90 per cent of the worker's pre-injury earnings for a year.

This provision will apply to all businesses except those with fewer than 20 employees and industries, such as construction, where work patterns make it impractical.

The Bill will require employers to contribute to injured workers' health care, life insurance and pension plans for up to one year after the injury, provided that the employee maintains his or her own share of contributions. These contributions will be at the same levels as they were before the injury.

In this way, the relationship between employers and employees will be maintained after an injury -- an important step in positioning the injured worker to be able to return to work.

The WCB will be required to make contact with injured workers within 45 days of their injury, and provide prompt rehabilitation services where appropriate. Injured workers who have not returned to employment within six months of an injury will be entitled to a formal evaluation of their need for vocational rehabilitation and to subsequent appropriate services.

Mr. Speaker, the Bill also deals with the need to revise the ceiling on financial compensation for injured workers.

Under the old legislation, the maximum gross earnings upon which benefits are calculated and assessments determined is \$35,100 per year -- approximately 140 per cent of the Average Industrial Wage. The annual earnings of about 470,000 workers in Ontario are greater than that.

The new legislation will raise the ceiling to 175 per cent of the Average Industrial Wage, which would currently come to approximately \$44,000 a year.

The increase will take place in two steps. During the January following the proclamation of the amendments, the ceiling will be raised to \$40,000. One year after that it will be increased to 175 per cent of the Average Industrial Wage.

Mr. Speaker, the overall financial impact of these reforms will be revenue-neutral. They will re-allocate resources within the workers' compensation system to compensate for loss of earning ability, and help to focus our efforts on the priority of rehabilitation.

There remain many other significant issues related to workers' compensation, issues which require discussion and consultation as a basis for further reform.

For that reason, the Ministry of Labour will publish a Green Paper next year. The paper will address such issues as the adjudicative processes and procedures within and around the WCB; the implications of the workers' compensation system for small business; and the methods of recognizing and adjudicating industrial disease compensation claims.

Our goal is clear -- to provide greater fairness and certainty for employees and employers alike.

The Bill that I will be introducing later today is a major step toward that goal.









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de l'Ontario

# NEWS RELEASE

11

400 University Avenue

Toronto M7A 1T7

(416) 965-7941

Release No.: 88-20

Date: June 20, 1988

Contact: Doug Glynn

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## MINISTER OF LABOUR TABLES AMENDMENTS TO REFORM WORKERS' COMPENSATION ACT

TORONTO -- Labour Minister Gregory Sorbara today introduced a package of amendments to the Workers' Compensation Act aimed at making it fairer to both employees and employers, and more effective in helping injured workers return to work.

The proposed amendments, tabled for first reading in the Legislature, include provisions to create a dual-award system for workers with permanent disabilities. The new two-track approach will compensate workers for both non-economic loss and loss of earnings.

The level of awards for non-economic loss will vary with a worker's degree of disability and age at the time of injury, up to a maximum of \$65,000. The level of earnings-loss benefits will be established by comparing workers' pre-injury and post-injury earnings capacity.

"These reforms will bring certainty to workers' compensation in Ontario," Mr. Sorbara said. "Under the old system, if compensation for workers who suffered a permanent partial disability happened to match their loss of earnings, it was purely coincidental. The new system will compensate workers for the financial loss they suffer as a result of a workplace injury. It will also explicitly recognize for the first time the non-economic losses suffered as a result of injuries in the workplace."

The legislation will foster a greater emphasis on the goal of helping injured workers to return to the workforce earlier and more successfully.

An obligation will be placed on employers to re-instate injured workers in the jobs they performed prior to their injury or face financial penalties.

New obligations will be imposed on the Workers' Compensation Board to provide injured workers with vocational rehabilitation services on a timely basis to facilitate re-integration into the workforce.

"We're going to make sure that an injury at work does not mean permanent exile from the workplace," Mr. Sorbara said. "Under the old system, the opportunity for injured workers to return to their jobs was largely a matter of luck. The new system will make it a matter of priority."

The legislation's other major provisions include transitional arrangements for the approximately 116,000 workers with permanent partial disabilities who receive compensation under the old system; a requirement that employers maintain their contributions to injured workers' health care, life insurance and pension plans for one year at the same levels as prior to the injury; and an increase in the \$35,100 per annum ceiling on covered earnings.

In introducing the legislation, Mr. Sorbara also announced that the Ministry of Labour will begin work immediately on a Green Paper, to be published next year, dealing with several other important aspects of workers' compensation that require re-examination and reform.

The reforms to the permanent partial disability award are designed to be cost neutral; they will distribute resources more equitably within the system, focussing on compensating income loss and encouraging workforce re-integration of injured workers.

"We have a great deal to do to ensure that compensation for injured workers in Ontario is as fair and comprehensive as it can be," Mr. Sorbara said. "Today we are taking several steps -- major ones -- toward that goal."

#### Financial Compensation -- Dual Award System

Where the award for non-economic loss is \$10,000 or more, the worker may elect to receive the compensation as a lifetime pension. For awards of a lesser value, the pension will be automatically commuted to a lump sum.

Workers will be compensated for their loss of earning capacity through regular payments set at 90 per cent of the economic losses they are expected to suffer. These payments will be tied to the Consumer Price Index, as are all WCB payments. The level of permanent benefits will be established one year after the injury, and will be reviewed twice, two years after the original assessment, then three years later. Workers may apply for additional reviews if their physical condition unexpectedly deteriorates.

The earnings-loss provisions replace the current approach based on clinical impairment, which calculates compensation levels purely on the basis of the degree of physical impairment. The old approach was commonly known as the "meat chart".

"It's time to go beyond the meat chart and treat people as human beings," Mr. Sorbara said. "The new system will ensure that injured workers receive compensation for the economic loss associated with their injury."

#### Facilitating re-integration into the workforce

Employers will be required to re-instate workers who suffer an occupational injury (after at least one year of continuous service) in their pre-injury job, or provide them with comparable employment. This obligation will remain in force for up to two years from the time the injury takes place.

Workers who are unable to perform their pre-injury jobs will be entitled to an offer from their employer of the first suitable job that becomes available.

(Excluded from this provision are small businesses with fewer than 20 employees, and industries, such as construction, where work patterns make it impractical.)

The Workers' Compensation Board will be required to make early contact with injured workers (within 45 days of injury) and provide prompt rehabilitation services, where appropriate. An injured worker who has not returned to employment within six months of an injury has a right to a vocational rehabilitation assessment and to subsequent appropriate services.

Employers will be required to continue to contribute to injured workers' health care, life insurance and pension plans for up to one year after the injury. These contributions will be at the same levels as prior to the injury, and will be required provided employees maintain their own share of contributions.

#### Transitional Arrangements

Financial compensation for workers who suffer injuries prior to the proclamation of the amending Act will be based on the old legislation. Lifetime pensions, indexed to inflation, now being paid to more than 116,000 recipients will be continued.

All current recipients whose pensions do not adequately make up for their loss of earnings capacity will be eligible for supplementary payments up to an amount equal to the full monthly pension payable under section 3 of the Old Age Security Act. The supplements will be adjusted annually to take account of inflation, and reviewed on the same basis as payments provided under the new system.

### Revised Financial Compensation Ceiling

The maximum gross earnings upon which benefits are calculated and assessments determined will be increased from \$35,100 per annum -- approximately 140 per cent of Ontario's Average Industrial Wage (AIW) -- to 175 per cent of the AIW (currently \$44,000 per annum).

This increase will take place in two stages -- the January following the proclamation of the amendments, and one year after that. The first stage of the increase will raise the ceiling to \$40,000. The second stage will lift it to the full 175 per cent of the AIW.

### Green Paper on Further Workers' Compensation Reform

The process of further reform to Workers' Compensation will be carried forward through a Green Paper to be published next year. The paper, based on consultation with workers and employers, will deal with such issues as: adjudicative processes and procedures; the effectiveness of workers' compensation services in Northern Ontario; the implications of the workers' compensation system for small businesses; and clarification of what constitutes an industrial accident.

The new legislation and the Green Paper are two of the ways in which the Government of Ontario is fulfilling its commitment to reform the Workers' Compensation System.

"We're beginning the process by returning to the fundamental principle upon which workers' compensation in this province was based -- to ensure that people do not suffer a financial loss as a result of an accident in the workplace," Mr. Sorbara said.





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Background No.:

15

Date: June 20, 1988  
Contact: Dick Clarke  
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## WORKERS' COMPENSATION REFORM

On June 20, 1988, Ontario Labour Minister Gregory Sorbara introduced amendments to the Workers' Compensation Act. These amendments provide for fairer and more comprehensive benefits to workers suffering permanent disability as a result of injury or illness at work and for greater vocational rehabilitation opportunities for those workers. The amendments will also place an obligation on employers to re-hire injured workers when they are capable of returning to work. The following materials provide background to the Minister's initiative.

- Summary of the Reform .....	Page 16
- Compensation for Lost Earning Capacity .....	Page 17
- Compensation for Non-Economic Loss .....	Page 20
- The Dual Award System: Two Examples .....	Page 21
- Re-integration of Injured Workers in the Workplace .....	Page 23
- Maintenance of Employment Benefits: One Example ....	Page 28
- Vocational Rehabilitation .....	Page 29
- Retirement Pensions .....	Page 34
- Transitional Arrangements for Current Permanent Disability Pensioners .....	Page 37
- The Earnings Ceiling .....	Page 40
- Green Paper on Future Reform of the Workers' Compensation System .....	Page 43
- Financial Implications of Legislative Reform .....	Page 45

### Appendices

- History of the Proposed Reforms .....	Page 46
- Workers' Compensation in Ontario .....	Page 48
- Glossary .....	Page 51

June 20, 1988

### SUMMARY OF THE REFORM

The new bill to amend the Workers' Compensation Act that was introduced to the Legislative Assembly of Ontario today by Labour Minister Gregory Sorbara:

- provides compensation to injured workers based on their lost earning capacity resulting from permanent disabilities caused by on-the-job injury or illness;
- explicitly recognizes non-economic losses, such as the effect on lifestyle, associated with permanent injuries;
- increases the level of earnings that the workers' compensation system covers;
- ensures that injured workers receive early access to rehabilitation assessment and the appropriate services;
- provides injured workers with the opportunity to be re-instated in their jobs;
- maintains post-injury relationships between employers and employees by requiring employers to continue their contributions to workers' health insurance, life insurance and pension plans for up to one year after injury;
- compensates permanently-disabled workers for losses in capacity to save for retirement;
- protects indexed lifetime pensions for the 116,000 people who now receive compensation for permanent partial disability and provides supplementary compensation to those whose pensions fall short of their lost earning capacity.

June 20, 1988

### COMPENSATION FOR LOST EARNING CAPACITY

At the centre of the permanent partial disability compensation reform is the replacement of an impairment rating system (the meat chart) as the basis for determining economic loss. The Bill replaces that system with an economic loss award based upon the impact that the injury has on the injured worker's earning capacity. The lost earnings benefit is in addition to an award for the non-economic loss associated with the injury.

#### Determination of Benefit Level

##### Old System

A worker who is partially disabled receives a life-time pension determined by applying the degree of impairment to 90 per cent of the worker's pre-injury net earnings, subject to an earnings ceiling of \$35,100 (gross) in 1988.

##### New System

By contrast, the new dual award system will compensate injured workers on the basis of the projected earnings loss. The maximum payable is 90 per cent of the difference between the worker's pre-injury net earnings and post-injury earning capacity.

For illustration, a comparison of the old and new benefits for a permanent partial disability (PPD) injury are set out below:

Example: a 35-year worker who suffers a 20 per cent impairment resulting in the worker being able to work on a part-time basis only.

	<u>Old</u>	<u>New</u> *
Pre-injury earnings (gross)	\$35,000	\$35,000
Pre-injury earnings (net of taxes)	\$26,805	\$26,805
Post-injury net earnings	\$10,000	\$10,000
PPD compensation	\$ 4,825	\$15,125
Total post-injury net annual income	\$14,825	\$25,125

\* The injured worker would also receive an award for non-economic loss of \$11,000.

The amount of loss compensation payable to an injured worker is 90 per cent of the difference between the worker's pre-injury net earnings and his or her potential post-injury net earnings from suitable and available employment.

The criteria used to determine an injured worker's projected wage loss will be set out in regulations. The criteria will include such factors as the worker's vocational characteristics, the prospect for successful vocational rehabilitation and the availability of suitable employment.

The worker's post-injury earnings will take into account any Canada Pension Plan award for the same injury.

Once determined, the earnings loss compensation will be indexed to the Consumer Price Index (CPI) as are all other WCB payments.

### Benefit Reviews

The loss of earnings benefit will be determined within one year after a WCB claim is filed and accepted by the Board. The period during which an earnings loss is to be determined may be extended by a maximum of six months if the injured worker's future earnings loss cannot be assessed because he or she has not sufficiently recovered from the injury. When a claim is initially denied by the Board, the one year period begins after the claim is allowed (following a successful appeal).

The initial compensation award for economic loss will be payable for a period of two years. The benefit will then be reviewed and may be adjusted to reflect changes in the worker's projected earning capacity. The earnings loss compensation will be automatically reviewed again three years after the first review.



After a review, benefit levels will be adjusted only if there is a greater than 10 per cent change in compensation.

If the final review results in an award of 10 per cent or less of the worker's pre-injury earnings, the worker will have the option of receiving this benefit either as a monthly payment or as a lump sum.

The fully indexed benefit established at the second review will continue until the worker attains the age of 65. At such time, the earnings loss award will be replaced with a retirement pension (see Retirement Pension Backgrounder).

A worker whose physical condition significantly and unexpectedly deteriorates may apply for a review of his compensation.

Workers 55 years of age or older and unlikely to become re-employed will be entitled, as a minimum, to a level of compensation equal to the full monthly pension payable under the Old Age Security Act (\$313 in 1988).

June 20, 1988

### COMPENSATION FOR NON-ECONOMIC LOSS

A worker who suffers a work-related permanent impairment will be entitled to compensation for non-economic effects of the impairment. If the amount exceeds \$10,000 the worker will be able to convert the award to an equivalent indexed life pension. Awards of less than \$10,000 will be paid in a lump sum.

The maximum amount of compensation for an individual whose occupational injury results in total permanent impairment will vary with the claimant's age. The maximum for a worker who is 25 years of age and younger will be \$65,000. The maximum will be reduced by \$1,000 for each additional year after the age of 25. The maximum compensation for an injured worker 65 years of age or older will be \$25,000.

People with partial permanent disabilities will receive payment in proportion to the degree of impairment.

After maximum medical rehabilitation of an injured worker, a Board appointed physician will assess the degree of the worker's permanent impairment according to criteria to be prescribed in the regulations of the Act. Upon receipt of the assessment, the Board will provide a copy to the worker and notify the employer of the degree of the worker's permanent impairment.

The injured worker or the employer may appeal the validity of the worker's initial rating. Upon receiving a request for a review of the assessment, the Board will provide the worker and the employer with the names of at least three medical practitioners, one of whom is to be selected to conduct the reassessment upon agreement by both parties. The names of the medical practitioners will be selected from a roster of medical practitioners appointed by Cabinet. The Board decision, following the review by the medical practitioners, will be final and binding.

A worker who suffers a significant and unanticipated deterioration of his or her permanent impairment may apply to the Board for a reassessment of the degree of permanent impairment.

June 20, 1988

### THE DUAL AWARD SYSTEM: TWO EXAMPLES

**SITUATION 1:** A 52-year-old construction worker suffers a back injury. The worker is married without children, and has limited education and language skills. The back problem results in a 30 per cent impairment. The worker earned \$35,000 per year gross (\$26,580 net) in construction; now has no prospect of returning to work in that industry; and is unlikely to benefit from vocational rehabilitation services.

#### Old System

The worker initially receives a temporary total compensation (TT) benefit of \$460.03 per week -- this represents 90 per cent of the worker's pre-injury net earnings.

Once the worker receives his 30 per cent clinical impairment rating, a pension of \$598.04 per month (i.e. 30 per cent of his previous TT benefit), indexed for inflation, is paid. The pension is paid for life.

The worker does not qualify for a vocational rehabilitation supplement under section 45(5) of the Workers' Compensation Act and is too young to be eligible for an older worker supplement under Section 45(7) of the Act.

#### New System

The worker's initial temporary total compensation benefit would be unchanged at \$460.03 per week.

The worker would receive a lump sum payment of \$11,400 for non-economic loss equal to 30 per cent of \$38,000 (i.e. his impairment rating multiplied by the maximum non-economic loss payable to a 52-year-old).

The worker would also receive an economic loss benefit recognizing the impact of the worker's injury on his earnings. In this particular case, it would be a full earnings loss--that is, he would receive 90 per cent of his pre-injury net earnings or approximately \$1,993.50 per month. This amount would be set one year after the injury occurs. It would be

reviewed in light of the worker's post-injury earnings experience two years after the initial earnings loss determination. A second, and final review, would occur three years after the first review. The economic loss benefit would be adjusted annually for inflation.

On reaching age 65, a worker's economic loss benefit would be replaced by a retirement pension financed by WCB contributions to a Board-administered pension fund. These contributions would be set aside monthly in an amount equal to 10 per cent of the economic loss benefit received by the worker.

The worker in this example, who suffered a very significant wage loss that would not have been adequately covered under the old system, would, under the new system, receive an income equal to 90 per cent of his pre-injury net earnings.

**SITUATION 2:** An unmarried 35-year-old teacher with seven years experience with the same employer, suffers a knee injury at work, which results in a 10 per cent permanent clinical impairment. He made \$35,000 per year gross (\$25,007 net) before the injury, and within three months of the injury is able to return to his pre-accident job with no reduction in his income.

### Old System

The worker receives temporary total disability benefits at \$432.81 per week.

Upon returning to work, he receives a \$187.55 lifetime pension per month, (i.e. 10 per cent of 90 per cent of pre-injury net earnings), indexed to inflation.

### New System

The worker's temporary total disability benefits would be the same, i.e. \$432.81 per week.

In addition, he would receive a \$5,500 lump sum for non-economic loss compensation (this represents 10 per cent of \$55,000, the maximum non-economic loss award for a 35-year-old).

Because of the fact that he is returning to work, he would not suffer a loss of earnings and therefore would not receive a future loss of earnings benefit. However, he would be entitled to follow-up reviews later to determine whether there may be loss of earnings at some point in the future.



June 20, 1988

## RE-INTEGRATION OF INJURED WORKERS IN THE WORKPLACE

### Statutory Re-employment Provisions

The amendments to the Workers' Compensation Act will place specific obligations on employers to re-employ their injured workers.

When an injured worker has had at least one year of continuous service, his or her employer will be required to offer the worker re-employment. The employer must offer the worker the pre-injury job or comparable employment, wherever the worker is able to perform the required duties. If the worker is unable to perform the essential duties of the pre-accident job, the employer will be obliged to offer the worker the first opportunity to accept alternative employment.

The employer's obligation to the worker will extend for 12 months from the date the injured worker is able to return to employment. However, this obligation to offer re-employment to the injured worker extends for no longer than two years from the date of injury.

Where the injured worker is dismissed within six months of the date of re-instatement with the pre-injury employer, there will be a presumption that the action was taken in violation of the re-employment provisions of the Act. The presumption in favour of the worker will be open to rebuttal by the employer.

Employers who fail to meet their obligations to re-employ an injured worker will be assessed an amount equivalent to 90 per cent of the worker's pre-injury net earnings for one year.

In cases where a dispute arises between the worker and the employer concerning the worker's ability to perform the essential duties of the pre-injury job, or the existence of comparable or alternative employment, the matter will be resolved by the Workers' Compensation Board. Decisions of the Workers' Compensation Board on these matters will be final and binding. These decisions will not be subject to review by the Workers' Compensation Appeals Tribunal.

The proposals will have precedence over any conflicting collective agreement provision but will not preclude an employer from offering, through collective agreement or otherwise, re-employment provisions that are more beneficial to an injured worker.

The re-employment obligation will not apply to those establishments that regularly employ fewer than 20 workers or those firms whose principal business is construction.

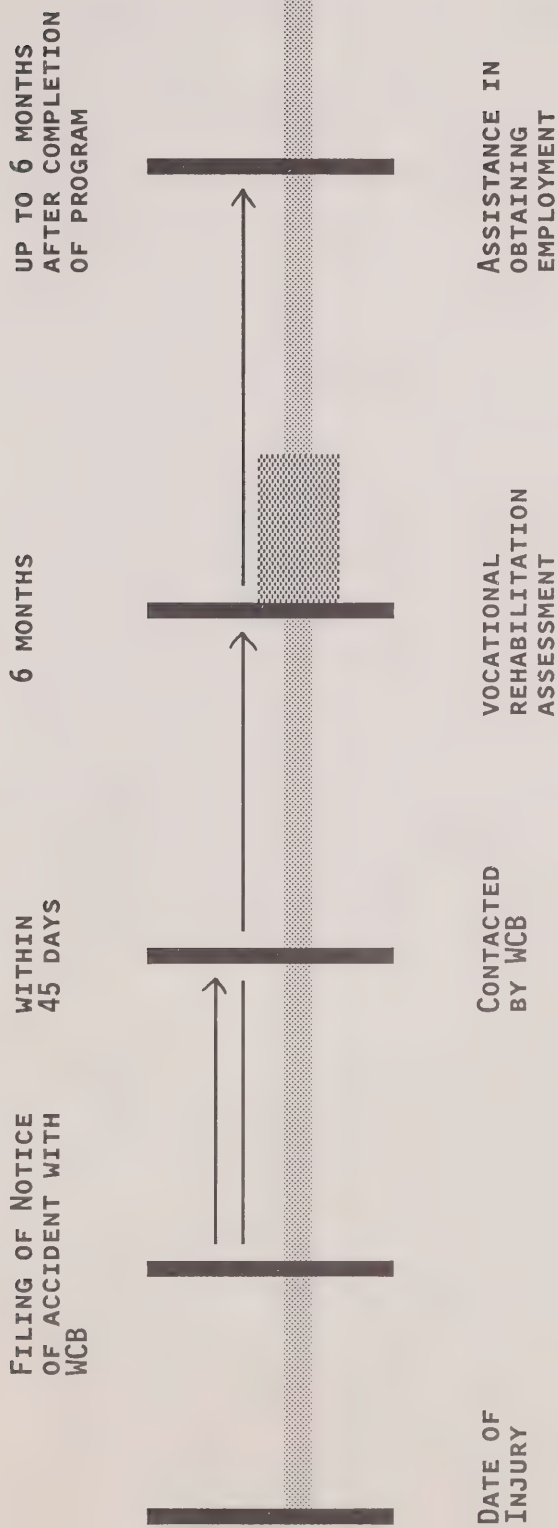
#### Maintenance of Employment Benefits

An employer will be obliged to continue employment benefits for up to one year from the date of injury. This obligation will extend to any health care, life insurance and pension plans to which the employer contributes in whole or in part.

Employment benefits represent a significant element in the average worker's overall economic well-being. Moreover, in a system that places greater emphasis on the re-employment of injured workers, this requirement represents an important confirmation of a worker's continuing employment connection.

This provision will be subject to employees maintaining their contributions to premiums where such are required.

# WORKPLACE RE-INTEGRATION



VOCATIONAL REHABILITATION PROGRAM

### EXAMPLE: RE-EMPLOYMENT

**SITUATION:** A 40-year-old miner suffers a back injury at work which results in a 20 per cent permanent clinical impairment. The worker is married with three children, has limited education and language skills and has been employed at the mine for 22 years. His pre-injury earnings were \$44,000 gross (\$32,134 net).

#### Old System

The worker receives temporary total disability benefits of \$461.14 per week, the maximum benefit payable with an earnings ceiling of \$35,100.

On reaching maximum medical recovery, the worker is rated for a 20 per cent permanent disability pension of \$404.24 per month (i.e. 20 per cent of 90 per cent of pre-injury net earnings), indexed to the Consumer Price Index and payable for life.

The employer has no obligation to re-employ the worker. With the assistance of the Board's vocational rehabilitation services, the worker finds light work elsewhere at a wage of \$7.00 per hour, 40 hours per week (approximately \$14,600 per year).

The worker also receives a temporary wage top-up supplement of \$881.24 per month for a six-month period, to enable the worker to adjust to his changed circumstances. The supplement and pension payment combined constitute 90 per cent of the difference between the worker's pre-injury and post-injury net earnings, after allowing for the effect of the ceiling.

#### New System

In the new system, the worker would receive temporary total disability compensation of \$556.17 per week. This is significantly higher than the corresponding payment in the old system because the worker would benefit from the rise in the covered earnings ceiling (a ceiling of \$44,000 is assumed in this calculation).

In addition, the worker would receive a non-economic loss benefit of \$10,000 (i.e. 20 per cent of \$50,000, the maximum non-economic loss award for a 40-year-old).



During the year following the worker's recovery and availability for employment, if the worker is unable to perform the essential duties of the pre-injury job or comparable employment, the employer is obliged to offer the worker the first opportunity to accept alternative employment. As a result of this provision, supplemented by use of vocational rehabilitation services, the worker would be re-employed with his old employer at \$30,000 gross annually (\$23,367 net).

The worker would receive a loss of earnings benefit based on 90 per cent of the difference between pre-injury net earnings and post-injury net earnings (i.e. 90 per cent of \$8,767, or \$657.53 per month). His estimated loss of future earnings would be reviewed on two further occasions, two years and five years after the initial determination.

The earnings loss benefit would be indexed and would continue to age 65, at which time it would be replaced by a retirement income loss benefit. The latter would be paid out of a Board-administered pension fund into which an extra amount equal to 10 per cent of the worker's earnings loss benefit would have been paid monthly throughout the period the worker received the earnings loss benefit. The accumulated amount, plus accrued investment income, would then be used to purchase an annuity for the worker. This would constitute his post-retirement workers' compensation pension.

In this example, the worker would benefit from the re-employment provision in the Bill by returning to employment with higher earnings than would otherwise have been the case. In addition, the worker would benefit from the raising of the ceiling, the introduction of compensation for non-economic loss, and the replacement of lost capacity to save for retirement resulting from his injury.

June 20, 1988

MAINTENANCE OF EMPLOYMENT BENEFITS: ONE EXAMPLE

**SITUATION:** A 27-year-old labourer, married with two children, suffers a broken ankle and damaged ligaments in a fall from a scaffold. His pre-accident gross earnings were \$23,000 per year. His employer pays the full cost of OHIP premiums, and provides an extended health care and dental plan for which the employee pays part of the premium. The employer continues contributions for the first month of absence only. The worker is away from work for four months.

Old System

The worker receives temporary total disability payments of \$328.20 per week, based on 90 per cent of his pre-injury net earnings.

After the first month of absence, the worker ceases to receive coverage for employment benefits, although he may continue his OHIP coverage by paying the full premium himself (just under \$60 per month for family coverage) out of his workers' compensation benefit income.

New System

The amount of temporary total disability payments would be the same as under the old system.

The employer would be required to maintain contributions for health care, life insurance and pension benefits during the worker's absence due to a work-related injury for up to one year, provided the worker's share of the premiums (if any) is maintained.

In this example, the employer would be obliged to maintain OHIP premiums. If the worker continued to pay his contributions to the extended health care and dental plans, his employer would also be obliged to maintain those benefits.

June 20, 1988

## VOCATIONAL REHABILITATION

### What is vocational rehabilitation?

The overall goal of vocational rehabilitation is to facilitate the reintegration of injured workers into the workforce.

A work-related injury or disease can have a serious impact on a worker's health, work capability and financial situation. The workers' compensation system in Ontario deals with each of these problems separately: medical rehabilitation services focus on the worker's health; compensation benefits address financial consequences of the injury or disease; and vocational rehabilitation services are designed to minimize the effect of injury or disease on the worker's working life.

Vocational rehabilitation typically commences with a review of the injured worker's need for vocational rehabilitation services. Following this review, a vocational rehabilitation assessment may then be undertaken. The assessment constitutes a comprehensive evaluation of the injured worker's functional or physical capabilities after the injury. Such factors as personal interests, aptitudes, educational background, language skills and work history are evaluated.

Where it is determined that an injured worker requires vocational rehabilitation, an individualized program is developed. The program encompasses such services as pre-vocational counselling, retraining on the job or at an educational institution, refresher courses, courses in English or French as a second language, job modification, training in job search techniques and job placement.

### Task Force investigation into vocational rehabilitation

The Board's vocational rehabilitation services have been a focus of some criticism over the years, it being perceived by injured workers and employers alike that the services may not have been meeting their full objectives.

In May of 1986, the former Minister of Labour established an Ontario Task Force on Vocational Rehabilitation. The Task Force, co-chaired by Maria Minna and Wally Majesky, conducted public hearings and consultations across Ontario.

On April 5, 1988, the Task Force Report was tabled in the Legislature. The scope of the Report was wide-ranging, the major themes of which were the need for early intervention in vocational rehabilitation, increased resources and the need for greater involvement of the injured worker in the planning of an individualized rehabilitation program.

The proposed legislative amendments incorporate these central themes of the Minna-Majesky Task Force Report.

### Vocational Rehabilitation in the Proposed Legislative Amendments

The proposed legislative amendments and the WCB's new administrative reforms (outlined below) will ensure that greater emphasis is given to the provision of vocational rehabilitation services within the Ontario workers' compensation system. As a result, a greater number of injured workers will be successfully reintegrated into the workforce.

To ensure early intervention, the proposed legislation will require that, within 45 days of the filing of the notice of accident, the Board contact injured workers who have not returned to work to identify the worker's need for vocational rehabilitation services. Where the Board determines that such services are appropriate, the Board will be obliged to provide them.

Within six months of the filing of the notice of accident, the Board will be required to offer a vocational rehabilitation assessment to an injured worker if that worker has not returned to the pre-injury or comparable employment and is not already receiving vocational rehabilitation services.

The Board will be required to provide the worker with a copy of the assessment and to notify the employer of the results of the assessment.

Where in the Board's opinion an injured worker should be provided with a vocational rehabilitation program, it will be designed in consultation with the worker and, where possible, with the employer and the worker's treating physician. It is expected that the obligation to re-employ the injured worker will encourage the accident employer to participate in the design and delivery of a vocational rehabilitation program.



While an injured worker is temporarily disabled and participating in a vocational rehabilitation program, he or she will continue to receive temporary disability benefits. These benefits will maintain net earnings at 90 per cent of the pre-injury level.

If a worker's impairment is found to be permanent, the worker will be entitled to earnings loss compensation under the new system. While co-operating in a Board-authorized vocational rehabilitation program, the worker will also be entitled to a supplement to bring his or her income up to the level of 90 per cent of pre-injury earnings.

### Vocational Rehabilitation at the Board

The WCB is taking steps to further improve the administration and delivery of its vocational rehabilitation programs. A Vocational Rehabilitation Strategy has been developed; it is intended to provide more accessible, timely and effective services as well as to encourage greater participation of injured workers, employers and workers' treating physicians in the design and implementation of individualized vocational rehabilitation plans. This will enable the Board to respond effectively to the renewed emphasis on vocational rehabilitation and reintegration of the injured worker into the workforce set out in the proposed legislative amendments.

By 1987, Board expenditures on vocational rehabilitation and related compensation had reached approximately \$200-million; some 200 Board staff are currently involved in the provision of vocational rehabilitation services to injured workers. The new system will substantially increase the resources devoted to vocational rehabilitation.

### EXAMPLE

**SITUATION:** A 25-year-old hotel employee suffers a back strain at work. The prognosis is a recovery within three to four weeks, with no anticipated residual problems and a return to regular work at that time.

After four weeks, the recovery is not complete, but the expectation is still that she will return to work. At the end of six months, she has still not recovered completely, despite intensive medical testing and assessment, and has not returned to work.

#### Old System

In a case of this kind, where the prognosis for recovery changes on an ongoing basis, vocational rehabilitation is not generally considered until medical rehabilitation is completed or until the time of pension evaluation.

The time lapse between the time of injury and referral for vocational rehabilitation services is likely to be substantial in such circumstances, for example, 18 months or more.

#### New System

In the new system, within 45 days of the injury, the Board would be required to contact the worker to identify the need for vocational rehabilitation services.

Up to this point, the expectation that the worker would be returning to work within a relatively short time would have precluded immediate provision of vocational rehabilitation services. However, the new early contact requirement would alert the Board to the fact that medical recovery has been slower than originally anticipated, and the worker would be monitored closely.

Once it is established that it is unlikely that the worker would be able to return to pre-injury employment, she would be referred for vocational rehabilitation services. In any case, within six months after the injury the Board would be required to offer her a vocational rehabilitation assessment. If a vocational rehabilitation program is found to be appropriate, it would be developed by the WCB vocational rehabilitation case worker working in consultation with the injured worker, and where possible, the employer and the injured worker's treating physician.

In the example described above, it might be decided that a period of on-the-job training be included in the vocational rehabilitation program, or, if necessary, there could be a period of formal training at an educational institution.

During the period of on-the-job or formal training, the worker would continue to receive temporary disability benefits, and her income would be protected. If the worker's impairment is found to be permanent, she would be entitled to earnings loss compensation and a non-economic loss award. While co-operating in a Board-authorized vocational rehabilitation program, she would also be entitled to a supplement to bring her income up to the level of 90 per cent of pre-injury earnings.

In this example, the requirement for early contact and assessment of the worker's vocational rehabilitation needs would result in much earlier implementation of a program for the worker than would have been the case in the old system.

June 20, 1988

### RETIREMENT PENSIONS

Just as the new workers' compensation system will insure against a loss in capacity to earn a living, so it will insure against a loss in capacity to save for retirement.

A worker who receives compensation for lost earnings will be entitled to the payment of a retirement pension from the Board when he or she attains the age of 65. At that time, payments of earnings loss compensation will be discontinued.

To finance the retirement pension benefit, the Board will contribute an extra 10 per cent of the value of a permanently disabled claimant's lost earnings compensation to a separate retirement pension fund. The amount contributed to this fund and its level of investment earnings will determine the amount of retirement pension that will be payable to the worker at age 65.

If the retirement pension provided by these contributions is less than \$1,000 per year, then the worker is entitled to receive the accumulated retirement savings in the form of a lump sum payment.

A worker who is entitled to a WCB retirement benefit will be able to choose among various pay-out arrangements. For instance, the injured worker could select a pension with a survivor benefit or an inflation protected retirement annuity.

The WCB retirement benefit will form part of an injured worker's total income after age 65. In addition, the injured worker may receive some or all of the following:

- Old Age Security benefits (currently \$313 per month);
- CPP retirement pension (approx. \$400-600 per month in 1988);
- employment pension income;
- any continuing WCB benefit for non-economic loss.



### EXAMPLE

**SITUATION:** A single, 42-year-old maintenance worker in the automobile industry suffers from work-related, degenerative nerve damage to his right hand resulting in a 15 per cent permanent clinical impairment. His pre-injury earnings were \$44,000 gross (\$30,527 net). Following vocational rehabilitation, the worker is re-employed with the company in a clerical position at a salary of \$20,000 gross (\$15,474 net).

#### Old System

The worker receives temporary total disability benefits of \$433.93 per week, the maximum benefit payable with an earnings ceiling of \$35,100.

After maximum medical recovery, the worker receives a permanent disability pension of \$282.05 per month (i.e. 15 per cent of 90 percent of pre-injury net earnings), indexed to inflation, payable for life.

The worker's post-injury salary of \$20,000 is significantly below the year's maximum pensionable earnings so CPP payments at retirement will be lower than if the worker had not suffered the disability. If the worker is a member of a private pension scheme, following retirement he will also receive an income from this source.

#### New System

The worker would receive temporary total disability payments of \$528.35 per week. This assumes an increase in the earnings ceiling to 175% of the Ontario Average Industrial Wage (AIW)--\$44,000.

After maximum medical recovery, the worker would receive a lump sum non-economic loss benefit of \$7,200 (i.e. 15 per cent of \$48,000, the maximum non-economic loss for a 42-year-old).

The worker would receive a loss of earnings benefit of \$1,129 per month (90 per cent of the difference between the net pre- and post-injury earnings -- i.e. 90 per cent of \$15,053 or \$13,548).

An extra amount equivalent to 10 per cent of the loss of earnings benefit (i.e. \$1,354.80) would be set aside annually for a money purchase annuity.

In this case, it is assumed that the worker would receive total temporary benefits for one year. Over the next 22 years, until the worker retires at age 65, the amount set aside each year would be indexed to inflation and compounded at prevailing market interest rates. When the worker turns 65, approximately \$100,000 would be available for the purchase of an annuity. This would be payable in addition to any private pension payment for which he would be eligible.

A \$100,000 annuity would provide the following monthly payments for a 65-year-old male, based on the type of annuity chosen and the interest rate used: (Note that the payments are approximate values.)

Single Life With No Survivor Feature:

indexed payments:	\$700.00/month
non-indexed payments:	\$950.00/month

Joint Life with 60% Survivor's Benefits:

indexed payments:	\$550.00/month
non-indexed payments:	\$800.00/month

June 20, 1988

TRANSITIONAL ARRANGEMENTS FOR CURRENT

PERMANENT DISABILITY PENSIONERS

The new dual award scheme will apply to injuries that occur on or after the date of proclamation of the relevant provisions of the amending Act. The old rules will continue to apply for injuries occurring before that date.

The lifetime pensions now paid to the approximately 116,000 existing recipients of permanent disability compensation will be continued by the Bill and will remain indexed to the rate of inflation.

However, the Bill recognizes that many injured workers were unjustly treated under the old system; their clinical impairment pension provided inadequate compensation for the loss of earnings experienced as a result of injury. The Bill will permit such people to be paid a supplementary amount in addition to their WCB clinical impairment pension. The supplementary payments will be subject to a maximum equal to the full monthly pension payable under section 3 of the Old Age Security Act. Currently this is just over \$313 per month.

Any permanently impaired worker suffering significant wage loss will qualify for a supplement regardless of age or present employment status provided the worker satisfies the eligibility requirements set out below.

- The loss of earning capacity of the worker must be significantly greater than is usual for the nature and degree of the injury;

and

- The worker who is unable to return to work and is unlikely to obtain employment following a vocational rehabilitation program.

or

- The worker has returned to employment and is unlikely to benefit from a vocational rehabilitation program that would lead to employment with earnings comparable to pre-injury earnings.

Once granted, the supplement will be subject to periodic review. The first review will occur two years after the initial award; the second and final review will occur three years after the first review. The supplement also will be adjusted annually to take account of inflation.

The new provision will benefit the estimated 20,000 - 25,000 injured workers now in receipt of permanent disability pensions who are suffering a significant wage loss.

In addition workers who are likely to benefit from a vocational rehabilitation program will be eligible to receive a rehabilitation supplement to their permanent partial disability pension. This supplement continues for the duration of the worker's co-operation in a Board-authorized vocational rehabilitation program.

Other jurisdictions in Canada which have introduced a dual award scheme for permanent disability compensation have addressed the question of how to deal with existing pensioners in two ways. Existing pensioners have either:

- a) been excluded entirely from coverage under the new scheme leaving their benefit levels to be determined in the same way as before; or
- b) been permitted to opt-in to the new scheme while cost-of-living adjustments have been discontinued for those choosing to remain on the old scheme.



### EXAMPLE

**SITUATION:** A 38-year-old forestry worker suffered an injury to his back at work in 1986. His injury resulted in a permanent 25 per cent clinical impairment. The worker is married with 2 children and has lived in a small town in northern Ontario all his life. He earned \$35,000 per year in the forestry industry before his injury; his injury precludes his return to that work. Because of limited alternative employment prospects in his area, he cannot return to comparable work, even after a vocational rehabilitation program. He is now working 16 hours per week at \$5.00 per hour and suffering a substantial loss of wages.

#### Old System

The worker has been awarded a 25 per cent disability pension and has not returned to pre-accident employment.

During the period of vocational rehabilitation, the worker receives a supplement to the pension payment. Despite the WCB's best efforts with vocational rehabilitation, he returns to other employment and suffers a substantial reduction in earnings.

The worker's only entitlement is to a monthly lifetime pension of \$504.06 indexed to inflation.

#### Effect of Transitional Provisions

The worker would retain his lifetime disability pension of \$504.06 a month, indexed to inflation.

In addition, he would be entitled to a supplement equivalent to the Old Age Supplement (OAS), currently \$313.15 per month. The Board would review the supplement two and five years after the initial award of the supplement. This supplement would continue until the worker is eligible to receive OAS.

His total benefit would then be \$817.21 per month.

The worker would not receive any compensation for non-economic loss as the injury pre-dated the amendment.

Similarly, the employer would not be obliged to offer this worker re-employment as the accident pre-dates the proclamation of the amendments.

June 20, 1988

THE EARNINGS CEILING

The workers' compensation system is designed to protect workers against the losses associated with a work-related industrial injury. There is a limit on the amount of income that the system will cover. This limit, called the earnings ceiling, is specified in the Act.

The current earnings ceiling is set at \$35,100, or approximately 140 per cent of the Ontario average industrial wage (AIW). The Bill will raise the ceiling to 175 per cent of the AIW. This will occur in two stages. On the first day of January following the date on which the amendments to the Act are proclaimed, the ceiling will rise to \$40,000. One year later, it will be increased to 175 per cent of the AIW, or approximately \$44,000.

To take into account the non-taxable nature of workers' compensation awards, injured workers compensation payments are based on workers' net income. For example, under the new dual award system, compensation for economic loss will be based on 90 per cent of the difference between the worker's actual pre-injury net income and post-injury earning capacity, net of taxes and deductions for UIC and CPP.

The example below illustrates the impact of raising the earnings ceiling. It assumes that the worker has a dependent spouse and two dependent children.

IMPACT OF REVISED EARNINGS CEILING

	Old	New First Step Increase	Second Step Increase
Ceiling	\$35,100	\$40,000	\$44,000
Less Taxes & Deductions	(\$8,456)	(\$10,338)	(\$11,866)
Net Earnings	\$26,644	\$29,662	\$32,134
Maximum Compensation (90 per cent of Net)	\$23,979	\$26,696	\$28,921

The old ceiling is indexed to the Consumer Price Index for Canada. The new ceiling will be indexed to the Ontario AIW to reflect more accurately the economic position of workers in the province. Three other provinces, British Columbia, New Brunswick, and Quebec, have already adopted a ceiling pegged to the provincial AIW.

Canadian workers' compensation systems have varying ceilings on covered earnings. Ontario's current ceiling is mid-way between the highest in Canada, Saskatchewan's at \$48,000, and the lowest, PEI's at \$22,000. The Quebec maximum is \$36,500.

It is estimated that, at present, about 470,000 workers are less than fully protected for loss of earnings. The proposed increase in the ceiling will broaden protection and reduce the estimated number of workers who are not fully protected to 210,000. The second step will bring the number of workers whose earnings exceed the ceiling down to 130,000.

Increasing the ceiling will have a particular significance for workers in the forestry, mining, construction and other high wage-paying industries. Implementing the higher ceiling in two stages will assist those industries to adjust to any increase in costs.

#### CURRENT PROVINCIAL EARNINGS CEILINGS

	<u>Ceiling</u>	<u>Method of Statutory Indexing</u>
British Columbia	\$41,300	Average annual wage
Alberta	40,000	None
Saskatchewan	48,000	+
Manitoba	33,000	Adjusted annually
Ontario	35,100 *	CPI for Canada
Quebec	36,500	Industrial Composite
New Brunswick	32,900	150 per cent AIW
Prince Edward Island	22,000	None
Nova Scotia	28,000	None
Newfoundland	45,500	None
Yukon Territory	36,000	Average wage of injured workers
Northwest Territories	36,800	None

\* Moving to \$40,000 after Proclamation and to 175 per cent of AIW, one year later

+ For injuries occurring after Sept. 1, 1985

N.B. All American states have a ceiling on covered earnings. Most states express the ceiling as a percentage of the state average weekly wage; of those using a percentage, the range is from 66 2/3 per cent to 200 per cent.

### EXAMPLE

**SITUATION:** A single, 41-year-old truck driver suffers lacerations, a fractured elbow and a dislocated knee as a result of a work-related vehicle accident. Prior to the injury, the worker earned \$44,000 gross (\$30,527 net) per year. She recovers completely from her injuries, with no permanent impairment, but is off work for a total of eight months, eventually returning to her previous job.

#### Old System

The worker receives temporary total disability benefits of \$433.93 per week, the maximum benefit provided for under the Act.

This amount is calculated by establishing a net earnings figure for a single person earning \$35,100, the maximum earnings covered for compensation purposes.

The balance of the worker's pre-injury earnings, equal to \$8,900, is not taken into account in computing benefit entitlement.

#### New System

The worker would receive temporary total disability benefits of \$528.35 per week, based on 90 per cent of her pre-injury net earnings.

With the higher earnings ceiling, equal to 175 per cent of the Average Industrial Wage (almost \$44,000, based on the estimated 1988 AIW), the worker's full earnings would now be taken into account in calculating the benefit.

Given the duration of her absence from work, the worker would also be contacted within the first 45 days to identify her need for vocational rehabilitation. As well, the WCB would be required to offer her a vocational rehabilitation assessment within the first six months. For the purposes of illustration, it is assumed that no program would be required, since the prognosis is for an eventual return to pre-injury employment.

In this example, the worker would benefit by having her full earnings considered in establishing the compensation payable. If she had sustained a permanent impairment rendering her unable to return to pre-injury employment, the higher ceiling would also have been of benefit to the extent that a future loss of earnings resulted.



June 20, 1988

GREEN PAPER ON FUTURE REFORM

OF THE WORKERS' COMPENSATION SYSTEM

The current reform proposals follow a number of previous legislative and administrative changes that have been implemented over the past few years. However, there remain other significant emerging issues which have not as yet been the subject of public discussion or consultation.

These issues will be the focus of a Green Paper to be published by the Minister of Labour in 1989.

Emerging issues that may be discussed are:

- problems with the adjudication system;
- including presently exempt industries within the workers' compensation system;
- impact of the workers' compensation system on small business;
- improvement of services in Northern Ontario;
- provision of interest payments on WCB awards;
- feasibility of employers assuming limited liability for the initial weeks of accident costs;
- WCB's ability to recover or transfer assessment liabilities in cases of business insolvency, sale of business or relocation out of province;
- clarification of what constitutes an occupational accident for purposes of receiving workers' compensation in Ontario;
- method of recognition and adjudication of industrial disease compensation claims;
- circumstances in which claim costs can be transferred to the second injury fund to provide compensation;
- possible repeal of the Blind Workmen's Compensation Act.

The implications of these issues for both workers and employers are complex and require a substantial measure of discussion before they can be resolved.

For example, concern has been expressed by some parties regarding the current adjudicative processes and procedures within the Workers' Compensation Board and Workers' Compensation Appeals Tribunal. In order to maintain broad public confidence in the workers' compensation system, it is vital that these processes and procedures continue to operate in accordance with high standards of efficiency, effectiveness and equity.

Equally, the impact of the workers' compensation system on small business has become a subject of increasing concern. The ability of small firms to manage workers' compensation claims, the consequences of experience rating, the adequacy of available services and ways of enhancing re-employment of their injured workers are possible topics for further examination.

The residents of northern Ontario, workers and employers alike, have unique concerns about the workers' compensation system, including the adequacy of Board services to injured workers and employers and access to alternative services in northern communities.

Another issue is the number of circumstances in which businesses do not contribute their share, entirely or in part, to the Workers' Compensation Board's Accident Fund. This occurs when employers fail to register with the Workers' Compensation Board, go out of business or leave Ontario with outstanding liabilities. This results in other employers having to bear the associated costs.

The Minister of Labour will be initiating discussion and consultation with interested parties on these and other issues prior to publication of the Green Paper.

June 20, 1988

### FINANCIAL IMPLICATIONS OF LEGISLATIVE REFORM

At present, permanent disability awards represent well under 10 per cent of all lost-time awards granted by the Workers' Compensation Board. The costs associated with these awards account for more than 30 per cent of the Board's annual assessments. In 1988, the cost of providing compensation for new permanent disability awards will be approximately \$650 million; this includes the cost of life-time pension awards and supplements.

The costs of Permanent Partial Disability (PPD) have grown rapidly in recent years. Despite this increase in expenditures, inequities inherent in the "meat chart" approach to compensation have not been addressed. Dissatisfaction with the system among injured workers remains high.

The annual cost of the proposed reform measures is estimated to be of comparable magnitude to the \$650 million cost of the old system. However, consistent with the objective of creating a fairer and more cost effective PPD system, these resources will be redirected toward those injured workers who suffer the most significant loss of earnings. This will be complemented by measures to facilitate reintegration of injured workers into the workforce.

The level of WCB assessments on the employer community is a reflection of the total costs of all the activities engaged in by the Board including compensation, health care and vocational rehabilitation services and accident prevention. In 1988, the average assessment rate was \$3.02 per \$100 of assessable payroll. The Board decision to adopt a 30-year strategy to retire the unfunded liability resulted in rapid increases in assessment rates between 1984 and 1987. The most recent average assessment rate increase of 4.9 per cent was the lowest in six years.

June 20, 1988

### HISTORY OF THE PROPOSED REFORMS

In 1978, the Wyatt Company - independent actuarial consultants - conducted a study of the WCB, examining its financial arrangements and its system of disability compensation. One of its recommendations was a reorganization of the permanent disability pension scheme which would base compensation payments solely upon workers' monetary losses.

In 1979, the WCB published a discussion paper - "Current Concerns in Workers' Compensation" - which examined the trend to wage loss as a reform model for permanent disability compensation. The paper discussed inequities which can result when permanent partial disability (PPD) compensation is based solely upon physical impairment; there is not necessarily a direct relationship between impairment and economic loss.

In January, 1980, the government appointed Professor Paul Weiler to conduct a comprehensive review of workers' compensation in Ontario. The initial report of the review, published in November, 1980, made several recommendations for reform including a proposal for a dual award scheme for compensating PPD claims (lump sum for impairment + continuing payment to replace actual lost income).

In 1981, the Minister of Labour published a White Paper containing policy proposals and draft statutory language. One central change advocated was, again, a dual award method of PPD compensation. The proposed dual award outlined in the White Paper would, similarly, differentiate and separately compensate the impairment and the reduced earning capacity resulting from an occupational injury.

Public discussion of the dual award approach to PPD reform continued for two years. It included extensive debate before a Standing Committee of the Legislature. The Committee's report, in December of 1983, indicated basic agreement with the dual award model. It endorsed the principle of separately compensating the economic and the non-financial aspects of an occupational injury. The Committee members proposed three different models for implementing a dual award scheme of PPD reform with divergent cost implications.



In June, 1984, the government proceeded with a package of WCB reforms, including new administrative structures and a new survivor benefit system. Implementation of a new PPD system was deferred.

During the last decade four provinces, Quebec, Saskatchewan, New Brunswick and Newfoundland, plus the Yukon Territory have proceeded to implement a dual award system. Manitoba and Alberta have recently published reviews of their workers' compensation systems which also recommend adopting this approach.

In early 1985, the government asked Professor Weiler to review his initial proposals for a dual award model of PPD compensation. His report, in December 1986, included some revisions to his earlier recommendations. The Report was circulated and comments were solicited from interested parties.

In the fall Throne Speech of 1987, the Government of Ontario indicated its intention to proceed with reform of the permanent partial disability compensation system. The proposed reforms outline a comprehensive dual award and workplace reintegration scheme which is, in many respects, quite distinct from earlier models.

June 20, 1988

## WORKERS' COMPENSATION IN ONTARIO

### What is Workers' Compensation?

The Workers' Compensation Act was established in 1915 to provide compensation and rehabilitation for workers with work-related injuries.

Under the system, which is administered by the Workers' Compensation Board (WCB), workers who suffer a work-related injury or who contract an industrial disease have the right to compensation regardless of fault. In return, the Act places limitations on workers' rights to sue for damages for work-related injuries.

The workers' compensation system is funded by employers carrying on business in Ontario.

Most employers fall within Schedule 1 of the Act, which operates under a collective liability system. Assessments, calculated at a dollar rate based on payroll, are paid by Schedule 1 employers into a general Accident Fund, which provides the funding for compensation to injured workers in Schedule 1 industries. The average assessment rate for 1988 is \$3.02 per \$100 of payroll.

Schedule 1 employers are divided into industry rate groups. Each rate group's assessment rate reflects the average cost of work-related injuries within that rate group. There are currently 109 rate groups within Schedule 1.

Schedule 2 employers self-insure and consist mainly of government employers and industries of an interprovincial nature such as railways, shipping and airlines.

Coverage under the Workers' Compensation Act is not compulsory for certain low-risk industries, including banking, insurance and other financial institutions.

All workers in Schedule 1 and 2 industries -- some 4.3 million -- are required by law to be covered by workers' compensation.

## WCB Organization

The WCB is a statutory corporation established by the Workers' Compensation Act. It is answerable to the Legislature through the Minister of Labour.

The WCB is managed and governed by a Board of Directors. Since 1985, the Board of Directors has consisted of nine part-time members representative of employers, workers, professionals and the general public as well as two full-time members. The full-time members are the Chairman, who is the Chief Executive Officer of the WCB, and the President and Vice-Chairman of Administration, who is the Chief Administrative Officer.

The WCB's organizational structure includes four divisions: Client Services, Corporate Services, Strategic Policy and Analysis, and Policy and Specialized Services.

The WCB has more than 4,000 employees located at its Toronto head office, in six regional offices in London, Hamilton, Windsor, Ottawa, Thunder Bay and Sudbury, and in seven area and information services offices located throughout the province.

Through the Occupational Health and Safety Education Authority (OHSEA), the Board also supports a wide variety of accident prevention activities and funds nine safety associations for the purpose of education in accident prevention.

Workers, their dependents, and employers affected by a decision of the Board regarding compensation benefits or assessments may object to that decision at any time, and have that decision reviewed by the Board. Furthermore, the Act provides for a right of appeal to an independent appeals tribunal, the Workers' Compensation Appeals Tribunal (WCAT).

Since 1985, the independent Industrial Disease Standards Panel (IDSP) has kept the WCB apprised of technical, medical and scientific developments in the area of occupational disease. The Office of the Worker Adviser and the Office of the Employer Adviser were also established in 1985 to assist their respective constituents in dealing with the WCB.

## WCB Services and Claims Information

Workers' compensation benefits are tax free and subject to a statutory ceiling. Since 1985, they have been based on 90 per cent of pre-injury net earnings.

Compensation and treatment for work-related injuries or industrial diseases under the Worker's Compensation Act include:

- provision and payment of health care and treatment;
- financial compensation for lost-time injuries resulting in temporary impairment;

- disability pensions for workers who suffer permanent impairment;
- medical, vocational, and social rehabilitation services;
- temporary income supplements for workers who participate in rehabilitation programs;
- benefits to surviving dependents;
- clothing expenses, the cost of prostheses, home and vehicle modification and burial expenses

There are two major kinds of claims - those involving time lost from work and those involving payment of health care costs only. Within the lost time category, the two main types of claims are for temporary disability and permanent disability.

- Temporary Compensation Claim - an allowed claim for a work-related injury which pays compensation benefits for as long as temporary disability continues. There are currently some 77,000 recipients.
- Permanent Disability Claim - an allowed claim which compensates an injured worker for a permanent impairment which results from a work-related injury or industrial disease. Permanent disability awards are fixed for the life of the injured worker and indexed to inflation. The vast majority of these awards are made for permanent partial disability (PPD); permanent total disability awards are relatively few in number. At the present time, there are some 116,000 permanent disability recipients with approximately 15,000 new awards made each year.

In 1987, almost 470,000 new claims were reported to the WCB. Of these, approximately 45 per cent were lost-time claims. In general, most lost-time claims are of relatively short duration. For example, approximately 70 per cent of temporary total compensation claims are settled, and the injured worker is back at work, within four weeks or less; approximately 95 per cent of all claims are settled within six months.

The average number of workdays for which individuals received temporary total compensation benefits in 1987 was approximately 34.6 days.



## GLOSSARY

IMPAIRMENT:	Physical or psychological damage or loss resulting from a work-related injury.
DISABILITY: (As defined by the legislation)	A worker's loss of earning power resulting from a work-related injury.
EMPLOYMENT BENEFITS:	Health care, life insurance and pension benefits for the worker or the worker's family which are fully or partially paid for by the employer.
FUTURE LOSS OF EARNINGS:	The net income a permanently disabled worker is projected to lose as a result of a workplace injury.
MAXIMUM MEDICAL REHABILITATION:	Condition where an injured worker has recovered as fully as the injury will permit.
NON-ECONOMIC LOSS:	Loss of enjoyment of non-work related aspects of life resulting from a permanent work-related injury.
PERCENTAGE OF PERMANENT IMPAIRMENT:	A factor in determining compensation for non-economic loss. It is determined by the WCB on the basis of a medical assessment of the injured worker's permanent impairment.
PERMANENT IMPAIRMENT:	Impairment that continues to exist after maximum medical rehabilitation.
PERMANENT PARTIAL DISABILITY (PPD):	A lifelong but not complete disability determined by WCB within one year following a work-related injury.
ROSTER OF MEDICAL PRACTITIONERS:	A list of qualified doctors appointed by the Lieutenant Governor in Council and independent of the WCB for the purposes of adjudicating disputes concerning the extent of permanent impairment.



B I L L      1 6 2WORKERS' COMPENSATION AMENDMENT ACT, 1988





Workers' Compensation  
Amendment Act, 1988

EXPLANATORY NOTES

The Bill institutes a system of compensation in which workers who are permanently impaired as a result of a work-related injury receive benefits for future loss of earnings, for non-economic loss and for loss of retirement income (sections 15 and 20).

The existing system of two streams of benefits - one for temporarily disabled workers and one for permanently impaired workers - is modified (sections 6, 10 and 11, subsection 13(2) and sections 15 and 29). The maximum amount of average earnings upon which compensation may be calculated under the Act is increased (section 12). Compensation of a worker for temporary disability ends after one year or when the worker is determined to be permanently impaired. The worker then may begin to receive benefits for future loss of earnings. Details of workers' eligibility for, and the duration of, these benefits are set out (section 15).

The amount of compensation paid to a worker for future loss of earnings is determined by the Board and is reviewed at two years and again at five years from the date of its original determination (section 15).

Workers who receive benefits for future loss of earnings also accumulate an entitlement to receive retirement income. The amount of the retirement income is proportional to the amount of, and the length of time that the worker received, the benefits for future loss of earnings (section 15).

The amount of compensation for non-economic loss payable to a permanently impaired worker is determined by the percentage of permanent impairment of the worker (section 15). The worker may have his or her medical condition reassessed and the compensation adjusted, if the worker experiences a significant deterioration of condition that was not anticipated when the original medical assessment was made (section 15).

New requirements governing vocational rehabilitation for injured workers are set out (section 19).

Workers who co-operate in vocational rehabilitation programs have their benefits under the Act supplemented while they are taking the program. These supplements are extended to workers receiving benefits under the existing Act (section 28). A supplement is also provided in certain circumstances for workers receiving benefits under the existing Act who are unlikely to benefit from vocational rehabilitation (section 28).

Employers are required for a specified period to reinstate or re-employ workers who have been injured following their recovery (section 19 and subsection 22(4)).

Employers are required to maintain certain employment benefits of injured workers, in specified circumstances, for one year after the injury occurs (section 3).

Criteria for determining the amount of compensation payable to workers who were apprentices, learners or students at the time of an injury are to be set out in the regulations (section 14).

The authority of the Board to divert a worker's compensation under the Act to the worker's spouse or dependants, in accordance with a court order for support or maintenance, is made subject to the certain limits (section 16).

The existing requirement that physicians and others caring for injured workers provide reports to the Board without additional charge is deleted (section 18).

Protection against civil liability is extended to members, officers and employees of the Industrial Disease Standards Panel, to officers and employees of the Office of the Worker Adviser, the Office of the Employer Adviser and of accident prevention associations, and to medical practitioners conducting assessments in specified circumstances (sections 15, 23, 24, 25 and 27).

The terminology in the Act relating to "disability", referring to economic consequences of an injury, and "impairment", relating to physical and psychological consequences of an injury, is clarified (sections 1, 2, 4, 5, 7, 8 and 9, subsection 13(1), sections 17 and 21, subsections 22(1), (2) and (3) and sections 26 and 27).

An Act to amend the  
Workers' Compensation Act

HER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of  
Ontario, enacts as follows:

1.--(1) Subsection 1(1) of the Workers'  
Compensation Act, being chapter 539 of the Revised  
Statutes of Ontario, 1980, is amended by adding  
thereto the following clauses:

- (ea) "contributions for employment benefits",  
in relation to a worker, means amounts  
paid in whole or in part by an employer  
on behalf of the worker or the worker's  
spouse or dependants for health care,  
life insurance and pension benefits;

. . . . .

- (g) "disability", in relation to an injured  
worker, means the loss of earning  
capacity of the worker that results from  
an injury.

(2) Clause 1(1)(i) of the said Act is amended by  
adding at the end thereof "but does not include  
contributions for employment benefits".

(3) The said subsection 1(1) is further amended  
by adding thereto the following clauses:

- (1a) "impairment", in relation to an injured  
worker, means any physical or functional  
abnormality or loss including  
disfigurement which results from an  
injury and any psychological damage  
arising from the abnormality or loss;

. . . . .

(va) "permanent impairment", in relation to an injured worker, means impairment that continues to exist after maximum medical rehabilitation of the worker has been achieved;

. . . . .

(xb) "student" means a person who is pursuing formal education as a full-time student and is employed by an employer for the purposes of the employer's industry, although not as a learner or an apprentice.

(4) Subclause 1(1)(z)(i) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 1, is amended by inserting at the end thereof "or student".

2. Subsection 3(7) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 3, is amended by striking out "disability" in the last line and inserting in lieu thereof "impairment".

3. The said Act is amended by adding thereto the following section:

Maintenance  
of employment  
benefits for  
injured worker

5a.-(1) If a worker is absent from employment because of an injury and if the employer at the time of the injury made contributions for employment benefits in respect of the worker, the employer shall continue to make such contributions for employment benefits throughout any absence from work by the worker that occurs during the year after the date of the injury, as long as the worker continues to pay the worker's contributions, if any, for the employment benefits.

Offence

(2) Every employer who fails to comply with subsection (1) is guilty of an offence for each pay period during which the failure to comply continues.



4. Section 13 of the said Act is amended by striking out "disability" wherever it occurs and inserting in lieu thereof in each instance "impairment".

5. Section 23 of the said Act is amended by striking out "permanent disability" in the sixth line and inserting in lieu thereof "compensation".

6. Section 24 of the said Act is amended by inserting after "payment" in the first line "under section 40" and by striking out "hereinafter prescribed" in the last line and inserting in lieu thereof "amount payable under that section".

7. Subsection 27(1) of the said Act is amended by striking out "if the disability is permanent" in the sixth line.

8. Subsection 28(1) of the said Act is amended by striking out "disability" in the eighth line and inserting in lieu thereof "impairment".

9. Subsection 32(1) of the said Act is amended by striking out "disability" in the second line and inserting in lieu thereof "impairment".

10.-(1) Clause 36(1)(c) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter

58, section 9, is amended by adding at the end thereof "or 54a".

(2) Subsection 36(13) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 9, is repealed and the following substituted therefor:

Deductions for  
C.P.P. and  
Q.P.P. payments

(13) In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the Canada Pension Plan or the Quebec Pension Plan.

(3) Subsection 36(16) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 3, section 1, is amended by striking out "\$31,500 per annum" in the last line and inserting in lieu thereof "the maximum amount determined under section 41".

11.-(1) Subsection 40(1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is amended by adding at the end thereof "or until the worker begins receiving payments under section 45a".

(2) Subsection 40(3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

Deductions for  
C.P.P. and  
Q.P.P. payments

(3) In determining the amount to be paid under clause (2)(b), the Board shall have regard to any payments the worker receives under the Canada

Pension Plan and the Quebec Pension Plan and, where subclause (2)(b)(i) or (ii) applies, the compensation shall be a periodic amount proportionate to the degree of disability resulting from the injury as determined by the Board.

12. Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

Maximum  
earnings

41.-(1) For the purposes of this Act, the maximum amount of average earnings upon which the loss of earnings is to be calculated is,

- (a) \$35,100, effective on the day this section comes into force;
- (b) \$40,000 per annum, effective on the 1st day of January of the year following the year in which this section comes into force; and
- (c) 175 per cent of the average industrial wage for Ontario, determined in accordance with subsection (2), effective one year after the effective date for the amount in clause (b).

Determination  
of the average  
industrial wage

(2) For the purposes of clause (1)(c), the average industrial wage for Ontario is an amount applicable from the 1st day of January to the 31st day of December in a year, the calculation of which is based upon the most recent published material that is available on the 1st day of July of the preceding year, and the amount of which is based upon the estimated weekly earnings industrial aggregate for Ontario as published by Statistics Canada.

13.-(1) Subsection 42(2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is amended by striking out "impairment of earning capacity" in the last line

and inserting in lieu thereof "degree of disability".

(2) Subsection 42(3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11 and amended by the Statutes of Ontario, 1985, chapter 3, section 2, is repealed.

14. Subsection 43(6) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

Apprentices,  
learners and  
students

(6) Notwithstanding subsection (1), if a worker was an apprentice, learner or student at the time of the accident, the Board shall determine the worker's average earnings using such criteria as may be prescribed by regulation.

15. Section 45 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11 and amended by the Statutes of Ontario, 1985, chapter 3, section 3, is repealed and the following substituted therefor:

Non-economic  
loss where  
permanent  
impairment

45.-(1) A worker who suffers permanent impairment as a result of an injury is entitled to receive an amount for non-economic loss in addition to any other benefit receivable under this Act.

Amount for non-  
economic loss

(2) The amount for a worker's non-economic loss from an injury is determined by multiplying,

(a) the percentage of the worker's permanent impairment arising from the injury as determined by the Board; and

(b) \$45,000,

(i) plus \$1,000 for each year of age of the worker under forty-five years at the time of the injury, to a maximum of \$20,000, or

(ii) minus \$1,000 for each year of age of the worker over forty-five years at the time of the injury, to a maximum of \$20,000.

Payment of  
the amount

(3) Payment of the amount for non-economic loss shall be by lump sum unless,

(a) the amount is greater than \$10,000; and

(b) the worker elects, by notice in writing to the Board, to receive the amount in equal monthly payments.

Determination  
of the  
percentage of  
permanent  
impairment

(4) The Board shall determine the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment having regard to medical assessments conducted under this section.

Medical  
assessment

(5) A medical practitioner who conducts a medical assessment under this section shall,

(a) examine the worker;

(b) assess the degree of permanent impairment of the worker according to the prescribed rating schedule, having regard to the existing and anticipated likely future consequences of the injury; and

(c) promptly forward a copy of the results of the medical assessment to the Board.

Initial medical  
assessment

(6) After maximum medical rehabilitation of an injured worker has been achieved, the Board shall appoint a medical practitioner who shall conduct a medical assessment of the worker.

Notification  
of worker and  
employer

(7) Upon receiving the results of a medical assessment conducted under subsection (6), the Board shall determine the percentage of permanent impairment of a worker and shall send notice of its decision to the worker and to the employer together with,



- (a) for the worker, a copy of the results of the medical assessment; and
- (b) for the employer, notice of the degree of permanent impairment of the worker found by the medical practitioner.

Request for re-  
consideration

(8) A worker or employer may, within ninety days after the decision of the Board is mailed under subsection (7), request that the Board reconsider its decision respecting the percentage of permanent impairment of the worker.

Selection  
of medical  
practitioner

(9) Upon receiving a request for reconsideration under subsection (8), the Board shall provide the worker and the employer with a list of at least three medical practitioners, selected from a roster established under subsection (16), from among whom the worker and the employer, by agreement and within thirty days after receiving the list, may select a person who shall conduct a medical assessment.

Idem

(10) If the worker and the employer fail to agree under subsection (9) upon a person to conduct the medical assessment, the Board shall select a medical practitioner from a roster established under subsection (16) and, where possible, who is not named on the list provided to the worker and the employer, who shall conduct the medical assessment.

Idem

(11) Where, because of the nature of a worker's impairment, the Board is of the opinion that it is impractical to provide a list of the names of at least three medical practitioners under subsection (9), the Board shall appoint such medical practitioner to conduct the medical assessment of the worker as the Board considers appropriate in the circumstances.

Reconsideration  
and notice

(12) Upon receiving the results of a medical assessment conducted as a result of a request under subsection (8), the Board shall reconsider its decision respecting the percentage of permanent impairment of the worker and shall promptly send notice of its decision following its reconsideration to the worker and to the employer together with,

- (a) for the worker, a copy of the results of the medical assessment; and

- (b) for the employer, notice of the degree of permanent impairment of the worker found by the medical practitioner.

Reconsideration following un-anticipated deterioration

(13) A worker who the Board has determined under this section to have a permanent impairment and who suffers a significant deterioration of condition that was not anticipated at the time of the most recent medical assessment under this section, may apply to the Board to reconsider the worker's percentage of permanent impairment, and subsections (5) to (12) apply to the reconsideration as though it were an initial determination by the Board under this section, with such modifications as the circumstances require.

Time for applying

(14) No worker may apply under subsection (13) until twelve months have elapsed from the most recent decision by the Board respecting percentage of permanent impairment of the worker, and no worker may apply more than twice under subsection (13).

No appeal to Appeals Tribunal

(15) Notwithstanding subsection 86o(1), no appeal lies to the Appeals Tribunal from a decision of the Board under this section or in respect of medical assessment conducted under this section.

Roster of medical practitioners

(16) The Lieutenant Governor in Council, on the recommendation of the Board, may establish a roster or rosters of medical practitioners for the purposes of selecting medical practitioners to make medical assessments under this section.

Remuneration of medical practitioners

(17) A medical practitioner who conducts an assessment under this section shall be paid such sum for services and expenses as the chairman of the Board may determine.

Application of subss.83(3,4)

(18) Subsections 83(3) and (4) apply with necessary modifications to all medical practitioners who conduct medical assessments under this section.

Compensation for future loss of earnings

45a.-(1) A worker who suffers injury resulting in permanent impairment or resulting in temporary disability for twelve continuous months is entitled to compensation for future loss of earnings arising from the injury.

Amount of compensation

(2) Subject to subsection (4), the amount of compensation payable to a worker for future loss of earnings arising from an injury is equal to 90 per cent of the difference between,

- (a) the worker's net average earnings before the injury, having regard to the effect of inflation upon this amount; and
- (b) the net average amount that the Board considers that the worker is able to earn after the injury in suitable and available employment,

for such period, up to the time that the worker reaches sixty-five years of age, as the Board considers appropriate in the circumstances.

Earnings from  
suitable and  
available  
employment

(3) For the purposes of subsection (2), in determining the amount that a worker is able to earn in suitable and available employment, the Board shall have regard to,

- (a) the net average earnings, if any, of the worker at the time the Board determines compensation under this section;
- (b) any disability payments the worker may receive for the injury under the Canada Pension Plan or the Quebec Pension Plan;
- (c) the personal and vocational characteristics of the worker;
- (d) the prospects for successful medical and vocational rehabilitation of the worker;
- (e) what constitutes suitable and available employment for the worker; and
- (f) such other factors as may be prescribed in the regulations.

Compensation for  
older workers

(4) The minimum amount of compensation payable under this section to a worker,

- (a) who is at least fifty-five years of age when the Board determines or reviews the amount of the worker's compensation under this section;
- (b) who has not returned to work; and
- (c) who, in the opinion of the Board, is unlikely to benefit from a vocational rehabilitation program which could help the worker return to work,

R.S.C.1970,  
c.0-6

is the amount of the full monthly pension for old age security under section 3 of the Old Age Security Act (Canada), including amendments thereto.

Supplement to  
compensation

(5) If a worker who is receiving compensation under this section is co-operating in a Board-authorized vocational or medical rehabilitation program,

- (a) that began before the date of the Board's review under clause (8)(a); or
- (b) that began within twelve months after a determination is made under subsection 45(13) of an unanticipated deterioration in the worker's condition,

the amount of compensation otherwise determined under this section shall be supplemented so that the total compensation payable to the worker while the worker is co-operating in the rehabilitation program is equal to 90 per cent of the worker's pre-injury net average earnings.

Determination  
of compensation

(6) Where possible, the Board shall determine the amount of compensation payable to a worker under this section,

- (a) in the twelfth consecutive month during which the worker is temporarily disabled;
- (b) within one year after notice of the accident in which the worker was injured is given under section 20, if during that year the Board determines that the worker is permanently impaired; or
- (c) within eighteen months after notice of the accident in which the worker was injured is given under section 20, if the worker's medical condition precludes a determination within the time stated in clause (a) or (b), whichever applies.

Idem

(7) The Board may extend the time limits set out in subsection (6) in the case of a worker who is not receiving compensation under this Act and whose entitlement to compensation is in dispute.

Review of  
amount of  
compensation

(8) Where possible, the Board shall review its determination of the amount of compensation payable to a worker under this section,

- (a) in the twenty-fourth month after the date of its initial determination;
- (b) in the sixtieth month after the date of its initial determination; and
- (c) within twenty-four months after a reconsideration of the percentage of permanent impairment of a worker, under subsection 45(13), results in a determination of increased permanent impairment of the worker,

but the Board shall not vary the amount of compensation payable as a result of a review unless the amount of the variation would be equal to at least 10 per cent of the amount of compensation being paid at the time of the review.

Payment of  
compensation

(9) Compensation for future loss of earnings is payable in monthly or other periodic payments except as provided in subsection (10).

Commutation  
of amount  
payable

(10) If, following the review under clause (8)(b) or (c), the amount of compensation determined to be payable to a worker under this section is 10 per cent or less of the amount of compensation payable for full loss of earnings, the Board may commute the periodic amount payable to the worker to a lump sum unless the worker elects to receive the compensation in periodic payments.

Benefits for  
loss of  
retirement  
income

**45b.**-(1) For the purpose of providing a worker who is receiving compensation under section 45a with a retirement pension, the Board shall set aside for the worker additional funds equal to 10 per cent of every payment made to the worker under section 45a.

Payments  
deemed to be  
made to  
worker

(2) Payments to the spouse or dependants of a worker made by the Board under section 50 out of funds otherwise payable to the worker under section 45a shall be deemed to be payments to the worker for the purposes of subsection (1).

Entitlement  
to retirement  
income

(3) Each worker on whose behalf the Board sets aside funds under subsection (1), upon reaching sixty-five years of age, shall receive a retirement pension under this section.



Survivor  
benefits

(4) Where a worker who is receiving a retirement pension or for whom funds are being set aside under this section dies, the spouse and dependants of the worker shall receive such benefits as may be prescribed by regulation.

Exception

(5) Notwithstanding subsection (4), a spouse and dependants who receive compensation under section 36 are not entitled to receive benefits under this section.

Payment of  
retirement  
income

(6) A worker for whom funds are being set aside under subsection (1) may select the payment scheme for the worker's retirement pension from among the schemes and subject to the restrictions prescribed in the regulations.

Idem

(7) Notwithstanding subsection (6), if the annual pension to which a worker becomes entitled upon reaching sixty-five years of age is less than \$1,000, the Board shall pay the worker's retirement pension under this section as a lump sum.

Calculation  
of pensions  
and benefits

(8) Retirement pensions and other benefits payable to or in respect of a worker under this section shall be calculated on the basis of the funds set aside for the worker plus the accumulated investment income thereon.

Employer  
payment

(9) An employer that is individually liable to pay compensation under this Act shall pay the funds set aside under subsection (1) to the Board.

Fund to be  
established

(10) The Board shall establish a fund into which funds set aside under subsection (1) shall be deposited and shall invest the fund in accordance with such procedures and restrictions as may be set out in the regulations.

16. Subsection 50(1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 13, is repealed and the following substituted therefor:

Garnishment  
for family  
support

(1) Where a worker is entitled to compensation under this Act and the worker's spouse is entitled or the worker's dependants are entitled to support or maintenance under a court order, the Board shall divert such portion of the compensation payable to

the worker in each periodic payment as is permitted under subsection (1a),

- (a) in accordance with a garnishment notice issued by a court in Ontario; and
- (b) to the extent of default or arrears accruing after the 1st day of April, 1985, under the court order.

R.S.O.1980,  
c.526 applies

(1a) Garnishment of compensation under subsection (1) is subject to the limits set out in section 7 of the Wages Act and compensation payable under this Act shall be deemed to be wages for the purposes of the Wages Act.

17.-(1) Clause 52(1)(c) of the said Act is amended by striking out "disability" in the second line and inserting in lieu thereof "impairment".

(2) Clause 52(3)(b) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 3, section 4, is amended by striking out "disability" in the fifth line and inserting in lieu thereof "impairment".

18. Section 53 of the said Act is amended by striking out "without additional charge" in the fourth line.

19. The said Act is further amended by adding thereto the following sections:

Application

54a.-(1) This section applies in respect of a worker who receives benefits under section 40.

Vocational  
rehabilitation

(2) Where, in the opinion of the Board, a worker should be provided with a vocational rehabilitation program, the Board, in consultation with the worker and, where possible, the employer and the worker's physician, shall design and provide the worker with a vocational rehabilitation program.

Particulars  
of program

(3) A vocational rehabilitation program referred to in subsection (2) may include vocational training, language training, general skills upgrading, refresher courses, employment counselling (including training in job search skills and the identification of employment opportunities), assistance in seeking employment and assistance in adapting the work place of an employer to accommodate the worker.

Entitlement  
to job search  
assistance

(4) If a worker's vocational rehabilitation program under this section includes assistance in seeking employment, the Board shall assist the worker to search for employment for a period of up to six months after the worker is available for employment and the Board may extend its assistance for a further period of up to six months.

Assessment re:  
vocational  
rehabilitation  
services

(5) The Board shall contact every worker who has not returned to work within forty-five days after notice of the accident under section 20 is filed, for the purpose of identifying the worker's need for vocational rehabilitation services, and the Board shall provide such services to the worker if the Board considers it appropriate to do so.

Idem

(6) The Board shall contact every worker,

- (a) who has not returned to his or her pre-injury employment or to alternate employment of a nature and at earnings comparable to the pre-injury employment within six months after notice of the accident under section 20 is filed;
- (b) who is not receiving vocational rehabilitation services; and
- (c) who has not completed a vocational rehabilitation program,

in order to offer the worker a vocational rehabilitation assessment and, if the offer is accepted, shall provide the assessment.

Idem

(7) If a worker is medically unable to undergo a vocational rehabilitation assessment when contacted by the Board under subsection (6), the Board shall make the offer of an assessment within a reasonable time after the date the worker becomes medically able to undergo the assessment.

Results of an  
assessment

(8) The Board shall notify the worker and the employer in writing of the results of a vocational rehabilitation assessment conducted under subsection (6) or (7) and shall send the worker a copy of the assessment.

#### REINSTATMENT AND RE-EMPLOYMENT

Application

54b.-(1) This section does not apply in respect of,

- (a) employers and workers engaged in the construction industries;
- (b) employers who regularly employ fewer than twenty workers; and
- (c) such classes or subclasses of employers and workers as may be exempted by the regulations.

Obligation  
to reinstate  
or re-employ

(2) The employer of a worker who, on the date of injury, had been employed continuously for at least one year by the employer,

- (a) shall reinstate the worker in the position the worker held on the date of injury or provide the worker with alternate employment of a nature and at earnings comparable to the worker's employment on that date; or
- (b) if the worker is unable to perform the essential duties of a position described in clause (a), shall offer the worker the first opportunity to accept suitable employment that may become available with the employer.

Duration of  
the employer's  
obligation

(3) An employer is obligated under subsection (2) until the day that is the earliest of,

- (a) two years after the date of the injury to the worker;
- (b) one year after the date the worker is available for employment; and
- (c) the date the worker reaches sixty-five years of age.

Failure of the  
employer to  
comply

(4) If an employer does not comply with the obligations set out in subsection (2), the Board may,

- (a) levy a penalty on the employer in the amount of 90 per cent of the worker's net average earnings for the year preceding the injury, where necessary restricting the worker's net average earnings to the maximum amount described in section 41; and
- (b) make payments to the worker for a maximum of one year as if the worker were entitled to compensation under section 40, and subsections 40(2) and (3) apply to the payments with such modifications as the circumstances may require.

Termination  
from employment  
of the worker

(5) An employer who, having reinstated or re-employed a worker in accordance with this section, terminates the employment within six months, is presumed, unless the contrary is shown, not to have fulfilled the employer's obligations under this section, and the employer is liable to the penalty described in clause (4)(a) and the worker may receive the payments described in clause (4)(b).

Board to  
determine on  
worker's  
application

(6) For the purposes of this section, the Board shall determine whether the employer has met the employer's obligations under this section upon receiving an application from the aggrieved worker.

No appeal to  
Appeals  
Tribunal

(7) Notwithstanding subsection 86o(1), no appeal lies to the Appeals Tribunal from a decision of the Board under this section.

Conflict with  
collective  
agreements

(8) Where this section conflicts with a collective agreement that is binding upon the employer and the obligations of the employer under this section in respect of a worker afford the worker greater reinstatement or re-employment terms in the circumstances than the terms available to the worker under the collective agreement, this section prevails over the collective agreement.

20. Section 69 of the said Act is amended by adding thereto the following subsection:



Idem

(1a) Without restricting the generality of subsection (1), the Board, subject to the approval of the Lieutenant Governor in Council, may make regulations,

- (a) prescribing, for the purposes of clauses 36(1)(b) and 40(2)(b) and subsections 45a(2), 135(5) and (7), the way in which payments received under the Canada Pension Plan and the Quebec Pension Plan are to be included in the calculation of compensation, of the amount that a worker is able to earn or of the sum of a supplement and an award, as the case may be;
- (b) establishing criteria for determining the average earnings of an apprentice, learner or student for the purposes of subsection 43(6);
- (c) establishing, for the purposes of medical assessments under section 45, a rating schedule setting out the degree of permanent impairment for specified types of permanent impairment and setting out criteria for assessing the degree of permanent impairment of other types of permanent impairment;
- (d) establishing criteria for assessing the personal and vocational characteristics of a worker, for the purposes of clause 45a(3)(c);
- (e) establishing criteria for determining what constitutes suitable and available employment for a worker, for the purposes of clause 45a(3)(e);
- (f) prescribing factors to be considered by the Board for the purposes of clause 45a(3)(f);
- (g) governing pensions payable to workers, their spouses and their dependants under section 45b;
- (h) governing the investment of amounts in, and payments out of, the fund established under subsection 45b(10);

- (i) exempting classes or subclasses of employers or workers from the application of section 54b;
- (j) establishing criteria for determining how many persons are regularly employed by an employer, for the purposes of clause 54b(1)(b);
- (k) establishing criteria for determining what constitutes alternative employment of a nature and at earnings comparable to a worker's pre-injury employment, for the purposes of clause 54b(2)(a);
- (l) establishing criteria for determining the essential duties of a position for the purposes of clause 54b(2)(b).

21.--(1) Clause 71(3)(h) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 24, is amended by inserting after "disabled" in the fifth line "or impaired".

(2) Clause 71(3)(i) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 24, is amended by inserting after "disabled" in the fifth line "or impaired".

22.--(1) Clause 75(2)(d) of the said Act is amended by inserting after "disability" in the first line "or impairment".

(2) Clause 75(2)(e) of the said Act is amended by striking out "disability" in the first line and inserting in lieu thereof "impairment".

(3) Clause 75(2)(g) of the said Act is repealed and the following substituted therefor:

(g) the future loss of earnings by reason of any injury.

(4) Subsection 75(2) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 58, section 27, is further amended by adding thereto the following clause:

(n) whether an employer has fulfilled the employer's obligation under section 54b to reinstate or re-employ a worker.

23. Section 86p of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application of  
subss.83(3,4)

(6a) Subsections 83(3) and (4) apply with necessary modifications to the chairman, vice-chairman and other members of the Panel and to the officers and employees of the Panel.

24. Section 86q of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application of  
subss.83(3,4)

(4) Subsections 83(3) and (4) apply with necessary modifications to the officers and employees of the Office of the Worker Adviser.

25. Section 86r of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application of  
subss.83(3,4)

(3) Subsections 83(3) and (4) apply with necessary modifications to the officers and employees of the Office of the Employer Adviser.

26.-(1) Subsection 122(1) of the said Act is amended by striking out "disabled" in the second line and inserting in lieu thereof "impaired" and by striking out "disablement" in the seventh line and inserting in lieu thereof "impairment".

(2) Subsection 122(11) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 58, section 4, is further amended by striking out "disability" in the third line and inserting in lieu thereof "impairment" and by striking out "disablement" in the last line and inserting in lieu thereof "impairment".

27. Section 123 of the said Act is amended by adding thereto the following subsection:

Application of  
subss.83(3,4)

(3a) Subsections 83(3) and (4) apply with necessary modifications to officers and employees of an association.

28. Part III of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37 and amended by 1985, chapter 3, sections 5, 6, 7, 8 and 9, is repealed and the following substituted therefor:

### PART III

#### TRANSITIONAL PROVISIONS

Definitions

132. In this Part,

"pre-1985 Act" means this Act as it read on the 31st day of March, 1985, as amended by the Statutes of Ontario, 1984, chapter 58, section 37 and 1985, chapter 3, sections 6, 7, 8 and 9;

"pre-1985 injury" means,

- (a) a personal injury by accident or an industrial disease that occurred before the 1st day of April, 1985, or
- (b) death that occurred before the 1st day of April, 1985, resulting from an injury by accident or an industrial disease;

"pre-1988 Act" means this Act as it read immediately before the coming into force of this definition, excluding Part III thereof;

"pre-1988 injury" means a personal injury by accident or an industrial disease that occurred on or after the 1st day of April, 1985 and before the coming into force of section 45a of this Act.

Pre-1985 Act  
continues  
to apply

133.-(1) Except as provided in this section, the pre-1985 Act continues to apply to pre-1985 injuries.

Exception

(2) Subsections 43(5), (5a), (5b) and (5c) of the pre-1985 Act cease to apply to pre-1985 injuries on the day this section comes into force.

Pre-1988 Act  
continues  
to apply

134.-(1) Except as provided in this section, the pre-1988 Act continues to apply to pre-1988 injuries.

Exception

(2) Subsections 45(5), (6), (7) and (8) of the pre-1988 Act cease to apply to pre-1988 injuries on the day this section comes into force.

#### PERMANENT PARTIAL DISABILITY SUPPLEMENTS

Definition  
of worker

135.-(1) In this section, "worker" means a worker who is disabled as a result of a pre-1985 injury or a pre-1988 injury.

Application

(2) This section applies in respect of workers whose disability is significantly greater than is usual for the nature and degree of the injury from which the disability arises.

Supplementary  
benefits for  
vocational  
rehabilitation

(3) If, in the opinion of the Board, a worker is likely to benefit from a vocational rehabilitation program, the Board shall supplement the amount awarded under,



- (a) subsection 43(1) of the pre-1985 Act,  
with respect to a pre-1985 injury; or
- (b) subsection 45(1) of the pre-1988 Act,  
with respect to a pre-1988 injury,

for permanent partial disability to the worker for the period, if any, during which the worker co-operates in a Board-authorized vocational rehabilitation program which could help the worker to return to work.

Calculation of  
supplement  
under subs.(3)

(4) Subject to subsection (5), in calculating the amount of a supplement under subsection (3), the Board shall have regard to,

- (a) the difference between the average earnings of the worker before the accident and the average earnings after the accident, with respect to a pre-1985 injury; or
- (b) the difference between the net average earnings of the worker before the accident and the net average earnings after the accident, with respect to a pre-1988 injury.

Maximum amount  
of supplement

(5) Subject to subsection (6), a supplement under subsection (3) shall be a weekly or other periodic payment of 75 per cent of the difference described in clause (4)(a) with respect to a pre-1985 injury, or 90 per cent of the difference described in clause (4)(b) with respect to a pre-1988 injury.

Idem

(6) The sum of the supplement under subsection (3) and,

- (a) with respect to a pre-1985 injury, the award made under subsection 43(1) of the pre-1985 Act, shall not exceed 75 per cent of the worker's pre-accident average earnings; and
- (b) with respect to a pre-1988 injury, the award made under subsection 45(1) of the pre-1988 Act, shall not exceed 90 per cent of the worker's pre-accident net average earnings,

and the Board shall have regard to the effect of inflation on the pre-accident earnings rate and to

any payments the worker receives under the Canada Pension Plan and the Quebec Pension Plan.

Supplement  
where  
vocational  
rehabilitation  
not indicated

(7) The Board shall supplement the amount awarded for permanent partial disability under,

- (a) subsection 43(1) of the pre-1985 Act, with respect to a pre-1985 injury; or
- (b) subsection 45(1) of the pre-1988 Act, with respect to a pre-1988 injury,

to a worker who,

- (c) in the opinion of the Board, is unable to return to work and unlikely to obtain employment following a vocational rehabilitation program; or
- (d) has returned to employment and, in the opinion of the Board, is unlikely to benefit from a vocational rehabilitation program which could lead to employment with earnings comparable to the worker's pre-injury earnings,

R.S.C.1970,  
c.O-6

by an amount not exceeding the full monthly pension for old age security under section 3 of the Old Age Security Act (Canada), including amendments thereto.

Duration of  
supplement  
under subs.(7)

(8) A supplement under subsection (7) may continue until the worker is eligible for old age security benefits.

Maximum amount  
of supplement  
under subs.(7)

(9) With respect to a worker with a pre-1985 injury, the sum of,

- (a) the supplement under subsection (7);
- (b) the award made under subsection 43(1) of the pre-1985 Act; and
- (c) the worker's average earnings after the accident,

shall not exceed 75 per cent of the worker's pre-accident average earnings.

Idem

(10) With respect to a worker with a pre-1988 injury, the sum of,

- (a) the supplement under subsection (7);

(b) the award made under subsection 45(1) of the pre-1988 Act; and

(c) the worker's net average earnings after the accident,

shall not exceed 90 per cent of the worker's pre-accident net average earnings.

C.P.P and  
Q.P.P. payments

(11) In making calculations under subsections (9) and (10), the Board shall have regard to the effect of inflation on the pre-accident earnings rate and to any payments the worker receives under the Canada Pension Plan and the Quebec Pension Plan.

Payment of  
supplement  
under subs.(7)

(12) The supplement awarded under subsection (7) shall be a weekly or other periodic payment.

Review of  
supplement  
under subs.(7)

(13) The Board shall review, where possible, a supplement awarded under subsection (7) in the twenty-fourth month and in the sixtieth month after the date on which the supplement is awarded.

29. Subsection 141(1) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 17, section 5, is amended by striking out "(3)" in the second line.

Commencement

30.-(1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 27 and section 29 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

31. The short title of this Act is the Worker's Compensation Amendment Act, 1988.











